



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

MEMORIAL HERMANN HOSPITAL SYSTEM  
3200 SW FREEWAY SUITE 2200  
HOUSTON TX 77027

DWC Claim #:  
Injured Employee:  
Date of Injury:  
Employer Name:  
Insurance Carrier #:

#### **Respondent Name**

STAR INSURANCE CO

#### **Carrier's Austin Representative Box**

Box Number 48

#### **MFDR Tracking Number**

M4-08-4773-01

#### **MFDR Date Received**

MARCH 28, 2008

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary:** "This patient was brought to Memorial Hermann Hospital and admitted through the ER due a fractured left hip sustained in the course [sic] and scope of employment. The patient was hospitalized from March 26, 2007 through March 30, 2007. The complete medical chart is included herewith which demonstrates the traumatic nature of these injuries and the extensive nature of the treatment provided. Due to the nature of these severe injuries, the course of treatment was unusually costly and extensive given the uncertainty of the patient's needs upon admission. The patient remained hospitalized for 4 days... It is the hospital's position that a unilateral, arbitrary reduction of its usual and customary charges by over 73% constitutes a fair and reasonable rate of reimbursement, especially for treatment of this trauma patient with surgical intervention and an extended length of stay of 4 days. The Division recognized the unpredictable nature of treating trauma and burn patients when it carved out these ICD9 codes from the standard per diem reimbursement methodology, Rule 134.401(c)(5). It is a generally accepted principle that treatment of trauma and burn patients is more costly than a scheduled, controlled surgery or diagnostic procedure."

**Amount in Dispute:** \$16,227.81\*

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary dated April 10, 2008:** "It is the Respondent's position the Requestor has failed to show the amount of Respondent's reimbursement was not fair and reasonable. The Requestor is not entitled to further reimbursement. Further, it appeals as if the admitting diagnosis code was 719.45 which is arthralgia pain, chronic."

**Respondent's Supplement Response dated April 21, 2008:** Since the initial response was filed, the Respondent has made an additional payment of \$7,809.32. Please see the enclosed EOB reflecting this additional payment. This brings the total amount of reimbursement, for dates of services March 26, 2007 to March 30, 2007, to \$16,791.32 which is a fair and reasonable rate of reimbursement. Respondent seeks continued denial of the additional requested amount of claimed reimbursement."

**Response Submitted by:** Janice G. Menzies, PC, Attorney At Law, 1412 Main Street-5<sup>th</sup> Fl., Dallas, TX 75202

## SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
March 26, 2007 through March 30, 2007	Inpatient Services	\$16,227.81*	\$0.00

## FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401 sets out the fee guideline for acute care inpatient hospital services.
3. 28 Texas Administrative Code §134.1 provides for fair and reasonable reimbursement of health care in the absence of an applicable fee guideline.
4. Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
5. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - F – The inpatient reimbursement has been based on per diem, stoploss factor or billed charges whichever is less.
  - N – Per Carrier: Invoice required for implant reimbursement.
  - F – Reimbursement has been calculated according to State Fee Schedule guidelines.
  - 86 – FP: Per Texas code this has been reviewed to a standard reasonableness based on benchmarks and reimbursements in your area.
  - 86 – FP: This item is packaged or bundled into another basic service or surgical procedure fee performed on this date of service, no additional
  - 86 – FP: The provider has not supplied the requested medical reports required for review of charges. Allowance cannot be recommended without s

### Findings

1. \* The requestor submitted an updated table showing additional payment had been received from the respondent.
2. This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of former 28 Texas Administrative Code §134.401(c)(5)(A), which requires that when "Trauma (ICD-9 codes 800.0-959.50)" diagnosis codes are listed as the primary diagnosis, reimbursement for the entire admission shall be at a fair and reasonable rate. Review of box 67 on the hospital bill finds that the principle diagnosis code is listed as 820.09. The Division therefore determines that this inpatient admission shall be reimbursed at a fair and reasonable rate pursuant to Division rule at 28 Texas Administrative Code §134.1 and Texas Labor Code §413.011(d).
3. Texas Administrative Code §134.1, effective May 2, 2006, 31 *Texas Register* 3561, requires that, in the absence of an applicable fee guideline, reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with subsection §134.1(d) which states that "Fair and reasonable reimbursement: (1) is consistent with the criteria of Labor Code §413.011; (2) ensures that similar procedures provided in similar circumstances receive similar reimbursement; and (3) is based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available."
4. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.
5. 28 Texas Administrative Code §133.307(c)(2)(G), effective December 31, 2006, 31 *Texas Register* 10314, applicable to requests filed on or after May 25, 2008, requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR),

as applicable.” Review of the submitted documentation finds that:

- The requestor seeks full reimbursement of billed charges based upon “It is the hospital’s position that a unilateral, arbitrary reduction of its usual and customary charges by over 73% constitutes a fair and reasonable rate of reimbursement, especially for treatment of this trauma patient with surgical intervention and an extended length of stay of 4 days. The Division recognized the unpredictable nature of treating trauma and burn patients when it carved out these ICD9 codes from the standard per diem reimbursement methodology, Rule 134.401(c)(5). It is a generally accepted principle that treatment of trauma and burn patients is more costly than a scheduled, controlled surgery or diagnostic procedure.”
- The requestor did not provide documentation to demonstrate how it determined that full reimbursement of billed charges was fair and reasonable.
- Documentation of the amount of reimbursement received for these same or similar services was not presented for review.
- The requestor did not provide documentation to demonstrate how it determined its usual and customary charges for the disputed services.
- The Division has previously found that “hospital charges are not a valid indicator of a hospital’s costs of providing services nor of what is being paid by other payors,” as stated in the adoption preamble to the Division’s former *Acute Care Inpatient Hospital Fee Guideline*, 22 *Texas Register* 6276. It further states that “Alternative methods of reimbursement were considered... and rejected because they use hospital charges as their basis and allow the hospitals to affect their reimbursement by inflating their charges...” 22 *Texas Register* 6268-6269. Therefore, the use of a hospital’s “usual and customary” charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
- The requestor did not submit documentation to support that payment of the amount sought is a fair and reasonable rate of reimbursement for the services in this dispute.
- The requestor did not submit nationally recognized published studies or documentation of values assigned for services involving similar work and resource commitments to support the requested reimbursement.
- The requestor did not support that payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

### **Conclusion**

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307. The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

### **ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

### **Authorized Signature**

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Signature

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Medical Fee Dispute Resolution Officer

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November 29, 2012  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**